

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #9	CCRB Case #: 201804060	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/20/2018 5:00 AM	Location of Incident: East 188th Street and Grand Concourse	Precinct: 46	18 Mo. SOL 11/20/2019	EO SOL 11/20/2019	
Date/Time CV Reported Mon, 05/21/2018 1:50 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Mon, 05/21/2018 4:35 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DTS Darryl Schwartz	07151	933534	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ronald Hobson	17689	941908	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DTS Darryl Schwartz	Abuse: Detective Darryl Schwartz stopped the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
B.DTS Darryl Schwartz	Abuse: Detective Darryl Schwartz searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]

## Case Summary

On May 20, 2018, at approximately 5:00 a.m. § 87(2)(b) was driving near Grand Concourse and East 188<sup>th</sup> Street in the Bronx. In the vehicle were § 87(2)(b) and several other individuals for whom § 87(2)(b) did not have the full names. Det. Darryl Schwartz of the 46<sup>th</sup> Precinct pulled over her vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). He was accompanied by PO Ronald Hobson, also of the 46<sup>th</sup> Precinct. During the stop, Det Schwartz opened the front driver's side door of § 87(2)(b) vehicle (**Allegation B: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) provided video of this incident taken by § 87(2)(b) (Board Review 1).

§ 87(2)(b) was issued summons #§ 87(2)(b) for not signaling when she changed lanes (Board Review 2).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Detective Darryl Schwartz stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Detective Darryl Schwartz searched the vehicle in § 87(2)(b) was an occupant.**

It is undisputed that Det. Schwartz stopped § 87(2)(b) vehicle, and that he opened the front door of the vehicle.

§ 87(2)(b) stated that at the time of the incident, she was driving north on Grand Concourse in the Bronx. She remembered driving above the speed limit, but did not remember at what speed. She stated that she did not change lanes without signaling. When Det. Schwartz initially stopped § 87(2)(b) she could not find her driver's license, so she spent some time searching for it. After § 87(2)(b) searched for her driver's license for a short period, Det. Schwartz opened the front driver's side door. He ordered her out of the vehicle to take a Breathalyzer test, which was then repeated at a different precinct stationhouse (Board Review 3).

Both § 87(2)(b) and § 87(2)(b) provided unverified phone statements, during which they also stated that Det. Schwartz opened the front driver's side door of § 87(2)(b) vehicle (Board Reviews 4 and 5).

Det. Schwartz stated that he remembered § 87(2)(b) vehicle driving above the speed limit, and erratically. He pulled over the vehicle. He did not remember § 87(2)(b) having trouble finding her identification or not providing her documentation. He stated that he opened the door to her vehicle after ordering her out of her car. After Det. Schwartz took § 87(2)(b) out of the vehicle, he had her take a Breathalyzer test, with which she was shown to have consumed above the legal limit to drive. Det. Schwartz then transported § 87(2)(b) to the 45<sup>th</sup> Precinct for intoxicated driver testing (Board Review 6).

The video that § 87(2)(b) took of the incident shows Det. Schwartz standing at the side of the vehicle, next to an open door of the vehicle (Board Review 1).



§ 87(2)(b).mp4

Article 30, Section 1180 of the Vehicle and Traffic Law (VTL) requires drivers to operate their vehicles at a “reasonable and prudent” speed (Board Review 7). People v. Robinson 97 N.Y.2d 341 (2001) allows officers to stop vehicles for which they have probable cause that the driver has committed a VTL violation (Board Review 8). People v. Funderbunk 122 A.D.3d 515 (2014) concludes that opening any door of a vehicle is a “minimally intrusive act” that is “incident” to a lawful vehicle stop (Board Review 09).

§ 87(2)(g)

§ 87(2)(g)

### **Allegations Not Pleaded:**

**Abuse:** § 87(2)(b) alleged that Det. Schwartz broke her front driver’s side window. § 87(2)(b) however, did not describe this damage as deliberate, and therefore, it is not being pleaded.

**Abuse:** § 87(2)(b) alleged that officers searched the back seat and trunk of the car, because the contents of the vehicle shifted. Neither she nor § 87(2)(b) and § 87(2)(b) however, saw this alleged search occur, so it is not being pleaded.

**Abuse:** § 87(2)(b) alleged that her person and handbag were searched when she was transported to the 45<sup>th</sup> Precinct stationhouse. It was determined that she was searched pursuant to arrest.

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).
- Det. Schwartz has been a member of service for 15 years, and has been a subject in four prior complaints and seven prior allegations, of which two have been substantiated.
  - Case 201404883 involved two discrete frisk allegations, and for each, recommended Command Discipline A. The NYPD imposed Formalized Training.

### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no convictions in New York City (Board Review 11).
- As of September 13, 2018, the New York City Office of the Comptroller does not have a record of a Notice of Claim being filed in regards to this complaint (Board Review 12).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date